IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Bail Appl..No. 6130 of 2007()

CRIME NO.282/06 OF CENTRAL POLICE STATION, ERNAKULAM.

PETITIONER

MANGALA BHARATHI,
W/O.SASHIDHARAN ACHARI, AGED 46, HOUSE NO.150 SFS,
KHB COLONY, NEW TOWN, YEHALENGA PO, BANGALORE.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY P.P. SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6130 OF 2007

Dated this the 9th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under Sec.409 of the IPC, it is submitted. The proceedings were initiated on the basis of a private complaint filed by the de facto complainant. The complaint was referred to the police by the learned Magistrate under Sec.156(3) of the Cr.P.C. Investigation was conducted and final report was filed. Cognizance was taken by the learned Magistrate. Consequent to the non-appearance of the petitioner, a warrant of arrest has been issued against the petitioner by the learned Magistrate. The petitioner finds such warrant of arrest chasing her.

2. According to the learned counsel for the petitioner, the petitioner is absolutely innocent. She was not aware at all

of the proceedings initiated against her before the police or the learned Magistrate. She has never been questioned by the police. The petitioner has a very valid defence to make. She is not in any way responsible for the offence alleged. Even the allegations would not justify any valid indictment against the petitioner as raised by the police. The petitioner was not aware of the proceedings against her and that is why she could not appear either before the Investigator or before the learned Magistrate. The petitioner is now willing to surrender before the learned Magistrate and seek regular bail. But the petitioner apprehends that her application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is, in these circumstances, prayed that directions under Sec.438 and/or Sec.482 of the Cr.P.C. may be issued in favour of the petitioner.

3. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that,

sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

6. The mere fact that the police have shown the petitioner

as an absconding should not by itself weigh with the learned Magistrate while considering the application for regular bail. All relevant circumstances will have to be considered by the learned Magistrate alertly.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge